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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/832,282	04/10/2001	Kelly Olsen	10209.123	8316
21999	7590	03/13/2006		
KIRTON AND MCCONKIE 1800 EAGLE GATE TOWER 60 EAST SOUTH TEMPLE P O BOX 45120 SALT LAKE CITY, UT 84145-0120			EXAMINER LASTRA, DANIEL	
			ART UNIT 3622	PAPER NUMBER
DATE MAILED: 03/13/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/832,282

**Applicant(s)**

OLSEN ET AL.

**Examiner**

DANIEL LASTRA

**Art Unit**

3622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16, 18-25 and 27-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16, 18-25 and 27-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. Claims 1-16, 18-25 and 27-29 have been examined. Application 09/832,282 (METHOD FOR UNILEVEL MARKETING) has a filing date 04/10/2001.

#### ***Response to Amendment***

2. In response to Final Rejection filed 09/16/2005, the Applicant filed an RCE, which amended claims 1-7, 11-13, 16, 18-21, 25, 27 and cancel claims 17 and 26.

#### ***Claim Objections***

3. Claim 12 is objected to because of the following informalities: Claim 12 recites "wherein the reference is received" when it should recite "wherein the reference received". Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 16 recites "receive payment for said order from said customer" but does not expressly teach who is the entity that is receiving said payment. For purpose of art rejection, said entity is the distributor.

#### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the

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subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10, 12-16, 18-24 and 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landau et al (US 2002/0082919).

As per claim 1, Landau teaches:

A method of unilevel marketing and distribution comprising the steps of:

*using a computer to receive a reference for a specific potential customer (i.e. "Gretta" see paragraph 83) from a sales representative (i.e. "webmaster Fred"; see paragraph 81), the reference being initiated by said sales representative (see paragraphs 85-86) and received by a seller (i.e. Football-USA.com affiliate system; paragraph 85-86), wherein said reference includes a message that is personalized specifically to the potential customer from said sales representative (see paragraphs 105).*

*preparing promotional materials for distribution to said potential customer (i.e. "newsletter"; paragraph 86), wherein said promotional materials include said personalized message and means for identifying said sales representative (see paragraphs 87-88);*

*distributing said promotional materials directly to the said potential customer from a distributor (i.e., see paragraphs 86-88)*

*if the potential customer purchases from said promotional materials, using a computer to:*

*receive a purchase orders from said potential customer, wherein said order is received by said distributor and identifies said sales representative (see paragraph 72)*

*receive payment for said order (see paragraphs 70-72); and*

*distribute a portion of said received payment as a commission to said sales representative (see paragraphs 21, 72).* Landau does not expressly teach that the sales representative is *known by said potential customer*. However, Official Notice is taken that it is old and well known in the business art that customers are more willing to read or accept emails from known sources. For example, the Examiner preferably reads emails from known sources (i.e. work related, family member, etc) and do not read the spam emails due to the threat of computer viruses. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Landau's referring entities would be motivated to be known by the users that said entities are trying to send offers, so said offers are read or accepted by said users and are not classified as a threat to the computers' health of said users.

As per claims 2 and 16, Landau teaches:

The method of claim 1, wherein the *reference* received from the sales representative is received over the *Internet* using a web page accessed by the sales representative (see paragraph 50).

As per claims 3 and 18, Landau teaches:

The method of claim 1, teach wherein *said* means for identifying the sales representative is an identification number (see paragraph 88).

As per claim 4, Landau teaches:

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The method of claim 1, teach wherein *said means for identifying provides said distributor with preferred options for distributing said portion of said received payment to the sales representative* (see paragraph 72).

. As per claims 5 and 19, Landau teaches:

The method of claim 1, wherein *said reference* is received over the Internet (see paragraph 50).

As per claims 6 and 20, Landau teaches:

The method of claim 1, wherein *said reference* is received via E-mail (see paragraph 50).

As per claims 7 and 21, Landau teaches:

The method of claim 1, wherein *said promotional material are* received via a telephone (see paragraph 50).

As per claims 8 and 22, Landau teaches:

The method of claim 1, but fails to teach wherein the promotional materials are in an audio form. However. Official notice is taken that it is old and well known in the computer art to use video and/or audio when transmitting advertisements and promotions to users via the Internet. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Landau would send audio promotions to users via the Internet, as said promotions would provide a better multimedia experience to said users.

As per claim 9, Landau teaches:

The method of claim 1, but does not expressly teach wherein the promotional materials are in printed form. However, Official Notice is taken that it is old and well known in the computer art to print emails in paper form using a computer printer. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that users of the Landau's system would print emails in paper form so said users have accessed to said emails when not connected to the Internet.

As per claims 10 and 24, Landau teaches:

The method of claim 1, but fails to teach wherein the promotional materials are in a video presentation format. However. Official notice is taken that it is old and well known in the computer art to use video when transmitting advertisements and promotions to users via the Internet. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Landau would send video promotions to users via the Internet, as said promotions would provide a better multimedia experience to said users.

As per claim 12, Landau teaches:

The method of claim 1, wherein the *reference* is received by a distributor was *input by the sales representative at a website* (see paragraphs 83-84)

As per claims 13 and 27, Landau teaches:

The method of claim 1, wherein the *reference* received from the sales representative is stored in a customer database (see paragraph 50).

As per claims 14 and 28, Landau teaches:

The method of claim 1, teach wherein the promotional materials are transmitted to the customer over the Internet in the form of electronic mail (see figure 7).

As per claims 15 and 29, Landau teaches:

The method of claim 1, wherein the customer purchases over the Internet (see paragraph 72).

6. Claims 11 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landau et al (US 2002/0082919) in view of Hammons (US 6,477,509).

As per claims 11 and 25, Landau teaches:

The method of claim 1, but fails to teach wherein the *reference* provided by the sales representative includes the customer's age, interests, income level, or household. However, Hammons teaches a system that target promotions to customers based upon said customers' age, interest or income level (see Hammons column 2, lines 15-35). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Landau would use the customers' age and income levels, as taught by Hammons to personalize the message that would be transmitted to customers (see Landau paragraph 105)

### ***Response to Arguments***

7. Applicant's arguments with respect to claims 1-16, 18-25 and 27-29 have been considered but are moot in view of changing from a Section 102(e) to a 103(a) rejection.



**Conclusion**

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 571-272-6720. The examiner can normally be reached on 9:30-6:00.

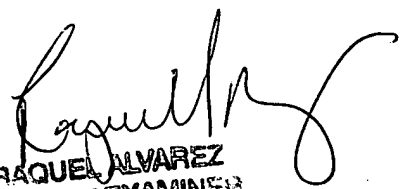
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ERIC W. STAMBER can be reached on 571-272-6724. The Examiner's Right fax number is 571-273-6720.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DL

Daniel Lastra

February 16, 2006

  
RAQUEL ALVAREZ  
PRIMARY EXAMINER